LEGAL LIABILITY

COMNAVMETOCCOM-

STANDARDS OF LIABILITY

- Negligence (definitive errors in navigational aids)

- Products liability (product is accurate but its design was defective)

PRINCIPLES OF MARINE CASUALTY LIABILITY

COMNAVMETOCCOM-

PRINCIPLES OF MARINE CASUALTY LIABILITY

- Fault, unseaworthiness and causation
- Burden of proof
- Reasonable reliance on government aids to navigation
- Navigation safety requirements
- Source of U.S. Collision law
- Shipowner's limitation of liability

INTERNATIONAL LAW FOR NAVIGATION

- International Convention for Unification of Certain Rules of Law in regard to Collisions
- 1978 International Standards of Training “STCW”
- International Regulations for Preventing Collisions at Sea, 1972 (COLREGS)

1978 STCW

- Watchkeeping standards (Art 4)

- Navigation of vessel (Art 6)
  - Equipment (Art 7)
  - Duties (Art 8)

1978 STCW CONVENTION

- The 1978 STCW Convention provided the standards for the training and qualifications of crew, and the keeping of navigational watch.

1972 COLREGS

- Stipulates marine traffic rules, and is used as a standard for deciding the percentages of damages to be borne in reference to how faithfully the ships observed the rules when the collision occurred.

COLREGS

- Steering and Sailing rules
- Lights and shapes
- Signals

Hydrographic surveys - restricted steering

FAULT, UNSEAWORTHINESS & CAUSATION

- Violation of a statute or regulation designed to prevent a collision
- Violation of court-developed rule interpreting statute
- Negligence in navigating a vessel
- Failure to act as a “reasonably prudent mariner”

BURDEN OF PROOF

Under U.S. law, there are several presumptions of fault which may be used to establish liability:

- Vessel which violates a statute, regulation or other rule designed to prevent collisions is presumed to have caused or contributed to the casualty.
- A moving vessel which collides with an anchored vessel or fixed structure is presumed to be at fault.
- A vessel which strikes a submerged object is presumed to be at fault.

REASONABLE RELIANCE ON GOVERNMENT AIDS TO NAVIGATION

- If U.S. Government marks an obstruction to navigation, it must exercise due care in doing so. Government may be liable if the obstruction was not properly marked and the navigator reasonably relied on the Government's action.
- Aids to navigation should show the actual location of the obstruction, and not merely warn of a hazard in the area.

NAVIGATION SAFETY REQUIREMENTS

Courts must decide which states law applies to the accident.

- When a collision occurs in international waters, the courts will apply general maritime law.
- If the vessels fly the same flag, the law of the common flag state applies.
- If the vessels fly different flags, follow the Brussels Collision Convention of 1910.
- If the collision occurs in foreign territorial waters, the law of the foreign country applies.

SOURCE OF U.S. COLLISION LAW

- The U.S. adopted the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) by Presidential Order in 1977.
- U.S. applies International Maritime Organization (IMO) regulations: • Chapter V, Regulation 20, Safety of Life at Sea (SOLAS) Convention of 1974 • Chapter V, Regulation 9, SOLAS Convention • Chapter V, Regulation 12, SOLAS Convention • IHO Standards (S-44)

SHIPOWNER'S LIMITATION OF LIABILITY

- The United States and many other countries allow shipowners to limit their liability arising from marine accidents under certain conditions. A Limitation Act allows a shipowner to limit his liability only if he is unaware of the cause of the accident (ex. broken rudder).

SHIPOWNER'S LIMITATION OF LIABILITY (con't.)

- Some of the frequent denials of limitation occur in cases where the incident results from one of the following causes:
  - Improper operating or training procedures
  - Inadequate or inaccurate charts and/or aids to navigation (radar)
  - Defects resulting from inadequate maintenance or repairs

GOVERNMENT LIABILITY

GOVERNMENT LIABILITY

- Act of State Doctrine
- Sovereign Immunity • Waiver by statute/decree • Discretionary Function Exception
- Negligence • Federal Tort Claims Act • Suits in Admiralty Act
- Products Liability

NEGLIGENCE

- Government cannot be found liable when a nautical chart accurately depicts information. U.S. was found not liable for failing to chart an underwater obstruction when it was unknown and not readily ascertainable.

NEGLIGENCE

NEGLIGENCE

- Cartographers can be liable for negligent charting since ships are required to have accurate charts onboard to be considered seaworthy.

NEGLIGENCE

- Analysis for finding NEGLIGENCE • Did the chart maker have a duty to injured party? • Did chart maker breach that duty? • Did the injured party rely on the chart to his detriment? • Was the breach of that duty the proximate cause of the injury?

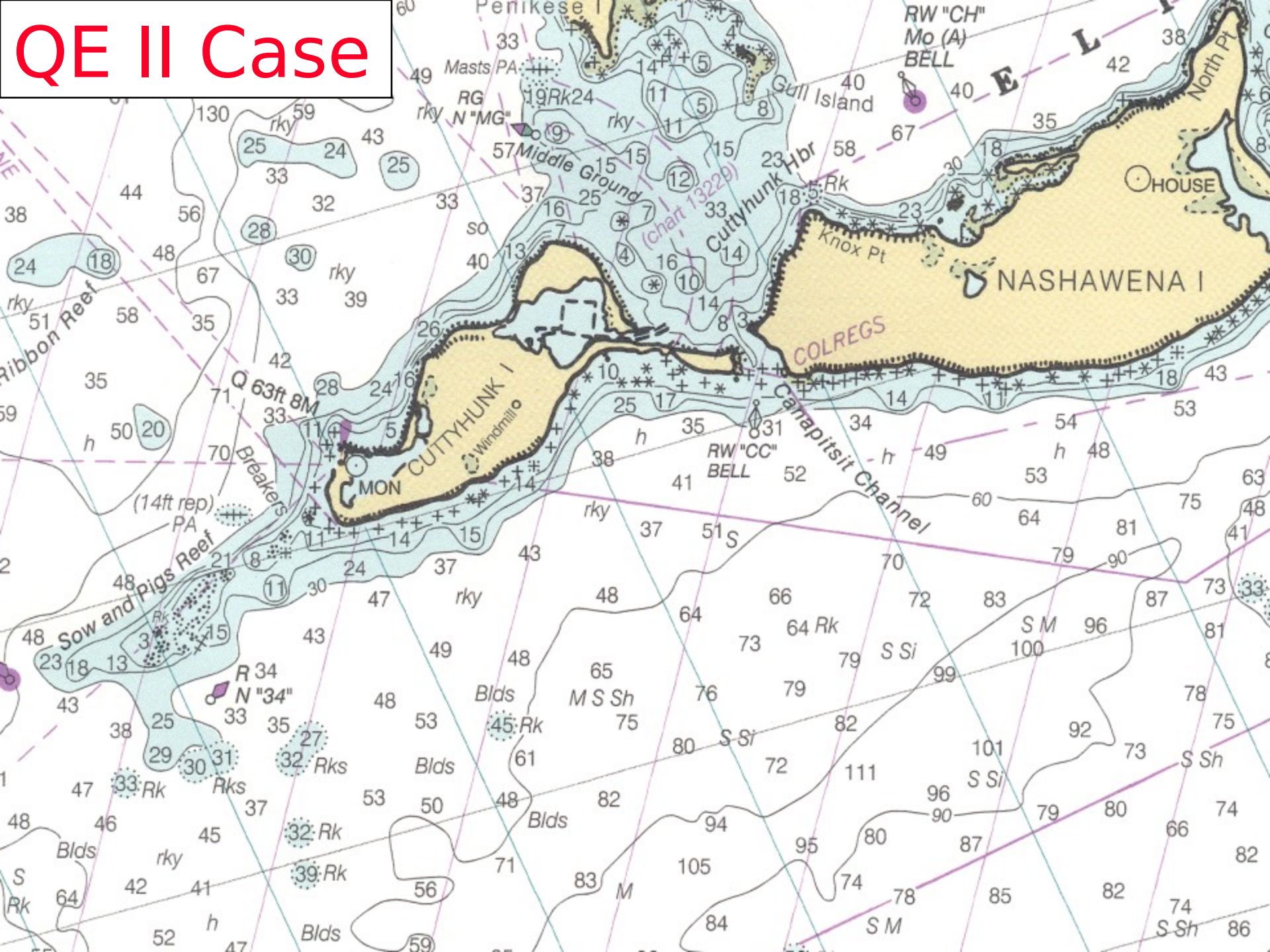
NEGLIGENCE

- Examples:
  - Chart did not depict a pipeline which vessel's anchor caught
  - Vessel ran aground as buoy was not in correct location
  - NIMA Light list gave wrong description of signal

QUEEN ELIZABETH II CASE

- Grounded August 7, 1992
- Last surveys of area were done in 1939
- Navigation chart lacked detailed depth survey information

QE II Case


Penikese I
Masts PA
RG
N "MG"
Middle Ground
(chart 13229)
Gull Island
RW "CH"
Mo (A)
BELL
North Pt
HOUSE
Cuttyhunk Hbr
Knox Pt
NASHAWENA I
COLREGS
Ribbon Reef
Q 63ft 8M
CUTTYHUNK I
Windmill
MON
Breakers
(14ft rep)
PA
Sow and Pigs Reef
RW "CC"
BELL
Canapitsit Channel
R 34
N "34"
Blds
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rky
S Si
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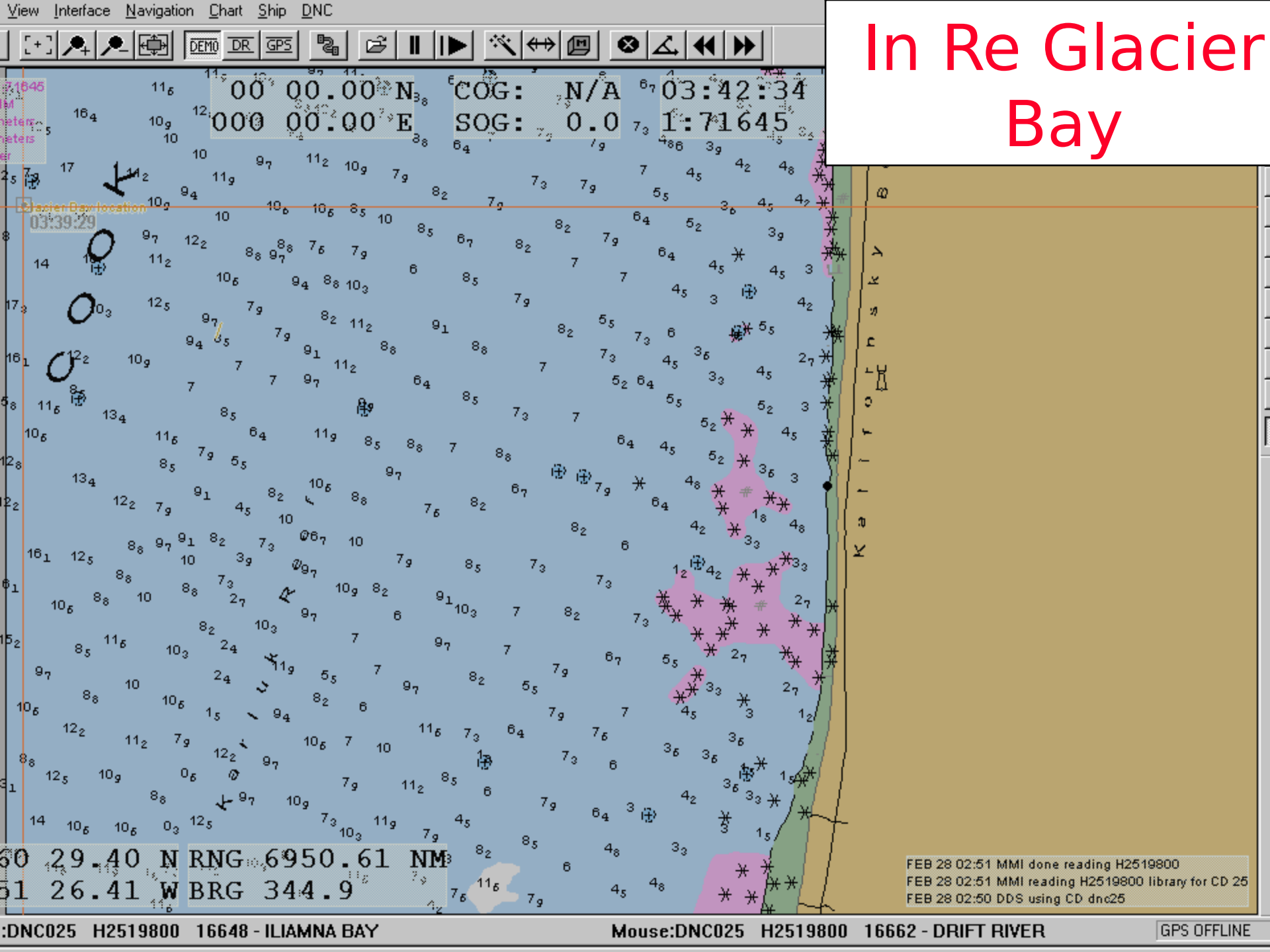
IN RE GLACIER BAY

- Struck rock at base of glacier
- Rock not disclosed on chart
- Warning notice stated
- Judgements of a scientific nature not covered by discretionary function exception
- Government not immune from suit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View Interface Navigation Chart Ship DNC
DEMO DR GPS
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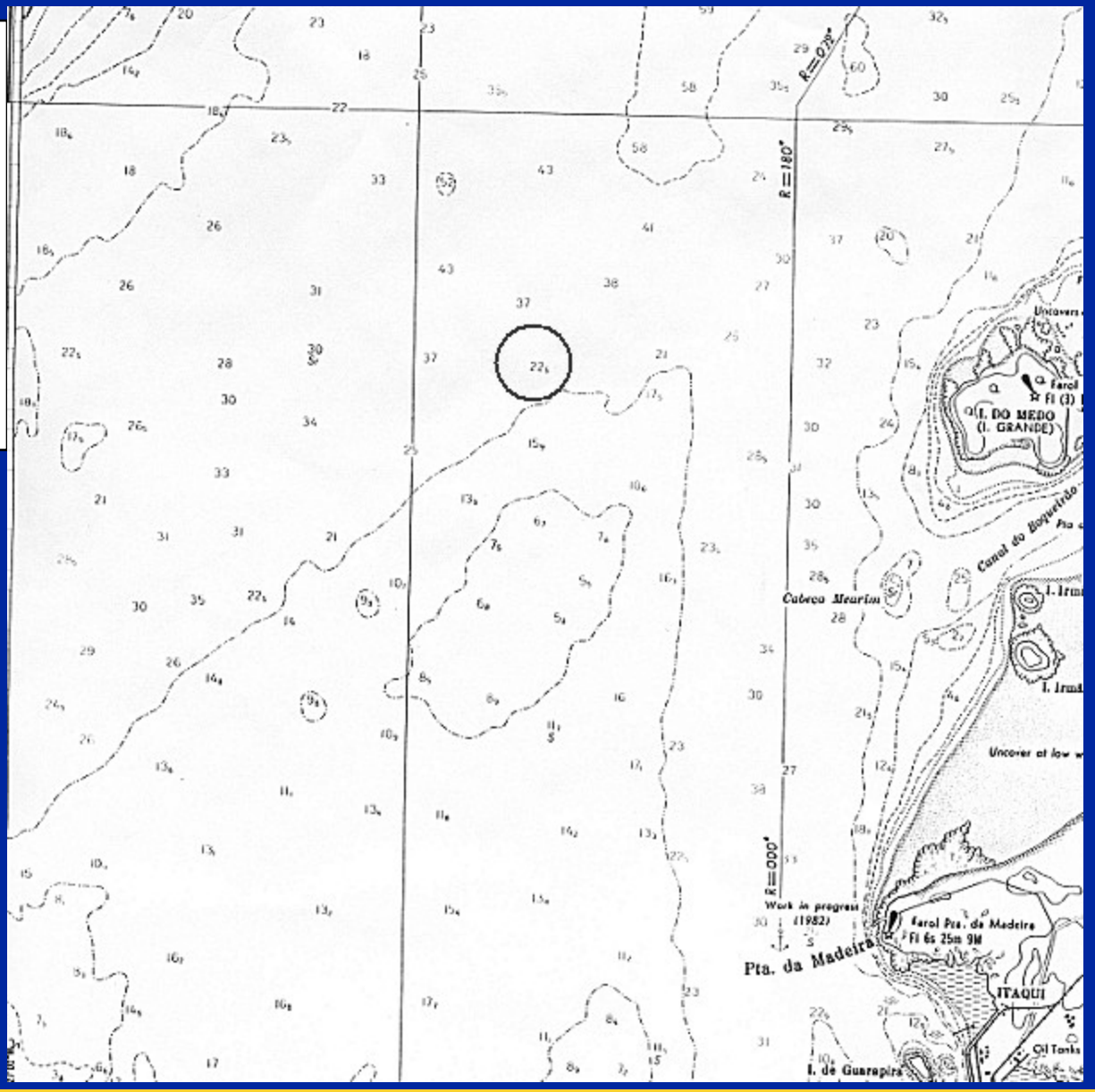
000 00.00 E SOG: 0.0 1:71645
Glacier Bay location
03:39:29
60 29.40 N RNG 6950.61 NM
51 26.41 W BRG 344.9
Kaliakan Spit
FEB 28 02:51 MMI done reading H2519800
FEB 28 02:51 MMI reading H2519800 library for CD 25
FEB 28 02:50 DDS using CD dnc25
:DNC025 H2519800 16648 - ILIAMNA BAY
Mouse:DNC025 H2519800 16662 - DRIFT RIVER
GPS OFFLINE

HYUNDAI CASE

- Allegation
  - Grounded Mar 87 - DMA negligent in failing to update relevant chart
- Findings
  - DMA Chart 24271 (Apr 83) did not accurately depict shoal
  - Chart was reproduction based on Brazilian surveys to 1974
  - DMA in possession of updated shoal info - did not issue NTM
  - Chart did not contain applicable warnings and cautions on channel approach
  - Abundant local information available to ship's master
  - Cause of grounding - master & pilot took vessel (with engine problems) into shoal waters with strong tidal currents without tugs
- Resolution
  - Case dismissed by US District Court
  - Section 2798 of 10 USC protects DMA from suit - whether data initially incorrect or not updated

Hyandai Merchant Marine Case



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-

PRODUCTS LIABILITY

COMNAVMETOCCOM-

PRODUCTS LIABILITY

- U.S. government has not consented to be sued for defective products and may only be sued for negligence (NOAA).
- Private chart maker (BSB, etc.) can be sued under both theories.

PRODUCTS LIABILITY

- Restatement on Torts
- Strict liability
- Potential parties

PRODUCTS LIABILITY

- Liability may be found even where the product was accurate as to its content, but defective for some other reason.

PRODUCTS LIABILITY

- The fact that the chart correctly portrayed the information provided by the government may not be sufficient to avoid liability if, for instance, it is shown that its design (scale, graphics, symbology, translation mislead the navigator) was defective.

RESTATEMENT SECOND ON TORTS

- One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or customer, or to his property, if • the seller is engaged in the business of selling such a product, and • it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

RESTATEMENT SECOND ON TORTS

- The rule stated in subsection (1) applies although
  - the seller has exercised all possible care in the preparation and sale of his product, and
  - the user or consumer has not bought the product from or entered into any contractual relation with the seller.

STRICT LIABILITY

- No need to prove negligence if you can show: • Defendant is commercial seller or manufacturer • Defendant sold or manufactured the alleged defective product • Product was unreasonably dangerous (defective) at the time that it left the manufacturer's hands, and • Defective condition was the proximate cause of the accident.

PRODUCTS LIABILITY

- Information communicated by the chart may be:
  - accurate but misleading
  - accurate but dangerous
  - simply inaccurate

POTENTIAL PARTIES

- Collector of hydrographic data
- Producer of the chart database
  - Chart inaccuracy represents depth
- Creator of the software
- Maker of the electronic hardware

BROCKLESBY CASE
(AERONAUTICAL CHART CASE)

- Airplane crash into mountain in 1973
- Chart produced by private company using government data
- Court held chart was a <u>product</u> • Defective condition • Unreasonably dangerous to user • Strict liability - even though seller used all possible care in preparation of chart
- Negligence if: Company knew or had reason to know chart was dangerous OR failed to use reasonable care in design, production, testing & inspection of chart

EU PRODUCTS LIABILITY DIRECTIVE

- Establishes the principle of liability without fault on the part of the producer in the event of damage caused by a defect in product.
- Two or more persons liable for the same damage will be jointly and severally liable.

NATIONAL LAWS

- Products exported are subject to the legislation of the country of distribution in which they may cause damage.
  - France
  - Sweden
  - Other

ELECTRONIC VERSUS PAPER CHARTS

COMNAVMETOCCOM-

ELECTRONIC VERSUS PAPER CHARTS

- The maker of the database which is used to reproduce paper charts is under the same duties as currently apply to paper chart products.

IHO ISSUES

- Converting paper charts to digital information
- Existing digital data not suitable for ECDIS
  - Collected by outdated survey procedure
  - Change in accuracy of data
  - Change in standards (S-44/S-57)

ECDIS

- 3 components:
  - Hardware (computer and GPS)
  - Software
  - Databases and updates
- All “Products” under Products Liability law

MANUFACTURER ISSUES

In the event of an accident, which "product" caused the accident?

- What level of care was owed to vessel?
- Was the risk of harm (defect) foreseeable?
- Did manufacturer (producer) comply with industry standards? (IEC, ISO, IMO, IHO, etc.)

VESSEL OWNER ISSUES

- Selection of appropriate ECDIS system
- Training in use of ECDIS
- Proper use in ECDIS as a navigation tool

LEGAL ISSUES AND ENC

- Official or unofficial charts on ENC data
- IMO rules on “official” data